FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

14 April 2022

L Marsten
Right to Know

By email: foi+request-8413-442cbf33@righttoknow.org.au

Dear Sir/Madam,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) dated 13 February 2022 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

I would like access to the following documents:

a) the consultations had between staff in the Federal Court and the APSC, in relation to new or revised broadbanding proposals for the National Judicial Registrar positions;
b) the APS role and classification evaluation records for the Legal 2 National Judicial Registrar positions;
c) the SES role and classification evaluation records for the SES Band 1 National Judicial Registrar positions;
d) the vacancy notifications for the National Judicial Registrar positions published in the Public Service Gazette which each of the following National Judicial Registrars (according to the website of the Federal Court) was engaged or promoted to fill - Phillip Allaway, Matthew Benter, Rupert Burns, Catherine Forbes, Claire Gitsham, Susan O'Connor and Katie Stride; and
e) any documents on how APS personnel files are to be maintained (presumably by human resources).

On 28 February 2022, the Court acknowledged receipt of your FOI request and advised you that, because your request covered documents that contained personal information about individuals, under section 27A of the FOI Act the Court was required to consult with the persons concerned before making a decision about the release of the document. For that reason, the period for processing your request was extended by a further period of 30 days in accordance with subsection 15(6) of the FOI Act.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Searches undertaken

Extensive searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. These searches included consultations with senior staff in the Court's People and Culture team, searches of the Court's human resources and recruitment inboxes, searches of staff emails, searches of the human resources shared drive, and searches of the Court's electronic document, records management and information systems. I am not aware of any other steps that could reasonably have been taken to identify the documents you have requested.

As a result of the searches undertaken, three (3) documents were identified as falling within the scope of your request. The table below lists those documents, in accordance with the relevant paragraphs of your request, and also notes where no documents were identified as falling within the scope of your request.

Paragraph (a)	Nil
Paragraph (b)	Nil
Paragraph (c)	Nil
Paragraph (d)	• Gazette Notice – National Appeals Registrar (noting the title has since changed to National Judicial Registrar – Appeals) • Gazette Notice – National Judicial Registrar – Native Title
Paragraph (e)	• AFDA Express V2 – Personnel Management

Decision

With respect to items (a) through to (c) of your request, I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to documents as I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist.

With respect to items (d) and (e) of your request, I have decided to grant you access in full to the documents found.

I have taken the following into account in making my decision:

- the terms of your request;
- the nature and content of the documents sought by your request;
- the relevant provisions of the FOI Act and relevant case law;
- the third party submissions received following consultations under section 27A of the FOI Act;
- the *Freedom of Information (Charges) Regulations 2019*; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Documents cannot be found or do not exist – subsection 24A(1) of the FOI Act

Subsection 24A(1) of the FOI Act provides:

(1) An agency or Minister may refuse a request for access to a document if:
(a) all reasonable steps have been taken to find the document; and
(b) the agency or Minister is satisfied that the document:
(i) is in the agency's or Minister's possession but cannot be found; or
(ii) does not exist.

As mentioned above, extensive searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. I am satisfied that all reasonable steps have been taken to find any documents within the ambit of items (a) to (c) your request, but that the documents cannot be found or do not exist. As there are no documents to provide you, I must refuse access to the documents requested in those items under subsection 24A(1) of the FOI Act.

Personal information – s 47F of the FOI Act

Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.

I consider that the vacancy notifications, otherwise known as gazette notices, found in response to item (d) of your request, contain personal information of public servants, namely their name and direct contact number. I am satisfied that the personal information is included in the documents because of that person's usual duties or responsibilities. I also have regard to the fact that the documents containing that personal information were, at some stage, available from publicly accessible sources.

Notwithstanding this, given direct contact numbers of particular public servants are contained in the documents, I considered it appropriate to undertake a consultation in accordance with subsection 27A(1) of the FOI Act on the basis that a person might reasonably wish to object to the release of their personal information. I did not receive any objections to the release of that personal information and nor do I consider that personal information unreasonable to disclose noting, in particular, that the direct work numbers contained within the documents are no longer in use by those public servants.

In these circumstances, I consider that disclosure of the personal information within the documents would not be unreasonable and, as a result, the conditional exemption under section 47F of the FOI Act does not apply. It is therefore unnecessary to consider the public interest test in section 11B of the FOI Act.

Access Format

Your request provides that "*Documents may be provided in digital format by return email*." I have therefore decided to grant you access to the following documents in PDF format and release those documents to you by email:

- Gazette Notice – National Appeals Registrar;
- Gazette Notice – National Judicial Registrar – Native Title; and
- AFDA Express V2 – Personnel Management.

The three documents listed above accompany this letter.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons as to why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website at: https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely,

C Hammerton Cole
Registrar